

SOMACH SIMMONS & DUNN
A Professional Corporation
STUART L. SOMACH, ESQ. (SBN 90959)
MAXIMILIAN C. BRICKER, ESQ. (SBN 350150)
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: (916) 446-7979
Facsimile: (916) 446-8199
ssomach@somachlaw.com
mbricker@somachlaw.com

MICHAEL W. DAUGHERTY, ESQ. (Co. Bar 49074)
Pro Hac Vice Forthcoming
RAMSEY L. KROPF, ESQ. (Co. Bar 21528)
Pro Hac Vice Forthcoming
1155 Canyon Blvd., Suite 110
Boulder, CO 80302
Telephone: (916) 446-7979
Facsimile: (916) 446-8199
mdaugherty@somachlaw.com
rkropf@somachlaw.com

Attorneys for [PROPOSED] Plaintiff-Intervenor
YUHA'AVIATAM OF SAN MANUEL NATION,
a federally recognized Indian tribe, also federally
recognized as SAN MANUEL BAND OF MISSION INDIANS

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION – RIVERSIDE

BLUETRITON BRANDS, INC.,

Plaintiff,

v.

UNITED STATES FOREST SERVICE,

RANDY MOORE, in his official capacity
as Chief of the U.S. Forest Service,

CHRISTOPHER FRENCH, in his
official capacity as Deputy Chief for the
National Forest System of the U.S. Forest
Service,

JENNIFER EBERLEIN, in her official
capacity as Regional Forester for the
Pacific Southwest Region of the
U.S. Forest Service,

Case No.: 2:24-cv-09720-JGB-DTB

**DECLARATION OF DANIEL J.
LITTLE IN SUPPORT OF
MOTION TO INTERVENE AND
MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: February 3, 2025

Hearing Time: 9:00 AM

Courtroom: 1

Judge: Hon. Jesus G. Bernal

Action Filed: August 6, 2024

1 DANELLE HARRISON, in her official
2 capacity as Forest Supervisor of the San
Bernardino National Forest of the
U.S. Forest Service,

3 MICHAEL NOBLES, in his official
4 capacity as Front Country District Ranger
of the U. S. Forest Service,

5 Defendants.

6 YUHA AVIATAM OF SAN MANUEL
7 NATION, a federally recognized Indian
tribe, also federally recognized as SAN
8 MANUEL BAND OF MISSION
INDIANS,

9 [Proposed] Plaintiff-Intervenor.

1 I, Daniel J. Little, declare as follows:

2 1. I am the Chief Intergovernmental Affairs Officer for the Yuhaaviatam
3 of San Manuel Nation, a federally recognized Indian tribe, also federally recognized
4 as the San Manuel Band of Mission Indians (the Nation), and on whose behalf I
5 submit this declaration. The facts set forth herein are based on my personal
6 knowledge, and if called as a witness, I could and would testify competently
7 thereto.

8 2. I have served as the Nation's Chief Intergovernmental Affairs Officer
9 since August 2019. In this capacity, I am responsible for protecting the Nation's
10 interests on many issues, and to that end, I routinely engage with other
11 governmental agencies and officials on behalf of the Nation, whether on a local,
12 state, federal, or tribal level.

13 3. Under the direction of the Nation's leadership, I am also charged with
14 representing the Nation in government-to-government meetings and advocating for
15 the Nation in the many contexts in which its interests are affected. This
16 engagement can involve informal meetings with other government officials, but it
17 also can involve formal consultations as required by law, during which Tribal
18 leadership participates as well. I am familiar with the requirements of federal
19 consultation with Indian tribal governments, to whom the United States owes a
20 special trust responsibility. I am particularly familiar with the requirements of
21 Executive Order 13007 and Executive Order 13175 requiring the federal
22 government to engage in meaningful consultation with tribal governments before
23 taking action that could adversely affect them, their sacred sites, lands and
24 resources.

25 4. I have direct experience participating in tribal consultations on behalf
26 of the federal government given my prior role with the National Indian Gaming
27 Commission (NIGC). I served as an appointed commissioner for the NIGC
28 between April of 2010 and June of 2015. During that time, I participated in over

1 50 government-to-government consultations with tribes as an official representative
2 of the United States government. I believe I am an expert on what consultation
3 means from both perspectives.

4 5. In my position as Chief Intergovernmental Affairs Officer, I receive
5 copies of correspondence addressed to the Nation from other governmental
6 agencies, and I closely monitor such correspondence to protect the Nation's
7 interests. I also monitor other sources of information, to ensure I am aware of other
8 entities' activities or actions that could affect the Nation's interests.

9 6. I have long been aware that the Nation relies upon water delivered to
10 its Arrowhead Springs property (Arrowhead Springs) through infrastructure owned
11 by a company called BlueTriton Brands, Inc. (BlueTriton). It is my understanding
12 that BlueTriton uses water diversions from Strawberry Canyon in the San
13 Bernadino National Forest for its own bottling purposes, but also to deliver water to
14 Arrowhead Springs. These are water diversions upon which the Nation and its
15 predecessors at Arrowhead Springs have long relied.

16 7. Against this backdrop, I am aware that the United States Forest
17 Service (USFS) issued to BlueTriton on July 26, 2024, a directive to cease all water
18 flows through its infrastructure (including to the Nation) within seven days. I have
19 seen and reviewed a copy of this "Notice of Denial of Application for Use and
20 Occupancy of National Forest Lands; Termination of Special Use Permit
21 FCD728503" (Notice of Denial). The USFS never notified the Nation of its Notice
22 of Denial, before or after the notice issued. It was only through BlueTriton that the
23 Nation learned the USFS had directed the company stop all water flows through its
24 water delivery system. BlueTriton shared the notice with the Nation as a courtesy.

25 8. The USFS' failure to notify, let alone consult with, the Nation about its
26 Notice of Denial is particularly egregious as agency officials knew the Nation relied
27 upon the water delivery from BlueTriton and used it for a variety of purposes at
28

1 Arrowhead Springs, including for regional fire protection. The USFS also knew the
2 Nation had no alternative water resource.

3 9. I have participated in numerous meetings with the USFS, both before
4 and after the July 26, 2024 Notice of Denial was issued to BlueTriton. By virtue of
5 meetings that preceded the July 26, 2024 Notice of Denial, the agency was well
6 aware of the Nation's reliance upon and need for the water delivered by BlueTriton,
7 and in fact, we specifically informed the USFS of the Nation's various uses of the
8 water at Arrowhead Springs, including for the benefit of the surrounding
9 community, and the Nation's lack of an alternative water source.

10 10. Starting in April 2024, the Nation received from BlueTriton copies of
11 letters from the Front Ranger of the San Bernardino National Forest, Michael
12 Nobles, to Louis Mixon of BlueTriton requesting information from BlueTriton
13 about the Nation's water use at Arrowhead Springs. The USFS had not asked the
14 Nation for this information or provided the Nation copies of its correspondence to
15 BlueTriton inquiring about the Nation. A true and correct copy of the April 18,
16 2024 letter, from Front Ranger of the San Bernardino National Forest, Michael
17 Nobles, to Louis Mixon of BlueTriton (as BlueTriton provided the Nation), is
18 attached hereto as **Exhibit 1**.

19 11. Thereafter, the Nation received from BlueTriton a copy of a May 24,
20 2024 letter from the USFS to BlueTriton, in which the federal agency was again
21 inquiring about and making statements regarding the Nation's water use at
22 Arrowhead Springs. A true and correct copy of that May 24, 2024 letter, from the
23 Front Ranger of the San Bernardino National Forest, Michael Nobles, to Louis
24 Mixon, III of BlueTriton, which the Nation received from BlueTriton (not the
25 USFS), is attached hereto as **Exhibit 2**. The May 2024 letter mischaracterized and
26 misstated the Nation's need for water at Arrowhead Springs, stating the following:

27 As we discussed, one area where detail is significantly lacking
28 concerns the quantities of water that were delivered to the Tribe
(the San Manuel Band of Mission Indians) in the past and will

1 be delivered to the Tribe in the future. It is essential that, as the
2 permittee, you provide a detailed account of the uses of this
3 water. It is not appropriate to broadly categorize the water use
4 as “primarily industrial, domestic and irrigation uses.” While
5 the Forest’s knowledge of the uses of this property are
6 incomplete, our records currently indicate no irrigated
7 agricultural uses on the property. Nor are there any
8 municipalities on the property. So far as we are aware there are
9 no residences on the property. The existing hotel and
10 conference facility is not currently being operated and is being
11 maintained by a skeletal staff.

12 12. After receiving a copies of the April 18, 2024 and May 24, 2024
13 correspondence to BlueTriton, representatives of the Nation, including myself, met
14 with USFS Supervisor Danelle Harrison and the Front Country District Ranger,
15 Michael Nobles, for the San Bernardino National Forest and discussed the USFS’
16 request for information about the Nation’s water use at Arrowhead Springs to
17 ensure the agency accurately understood the Nation’s water uses and needs. In
18 these discussions, we provided information to the USFS officials that contradicted
19 its statements in the May correspondence to BlueTriton, demonstrating the agency
20 was operating under a false understanding of the Nation’s water uses and needs.
21 We informed the agency officials that:

- 22 (a) the water received from BlueTriton was the primary water source for
23 Arrowhead Springs and was essential for all property operations,
24 including firefighting;
- 25 (b) there were no alternative sources of water as there was no nearby
26 municipal water connection;
- 27 (c) the Arrowhead Springs property was being used by the Nation daily,
28 including by the government departments housed in the administration
building, the firefighters at the fire station, and the employees who
operate the events that are held throughout the property;
- (d) the Nation has a native plant propagation area on the property and
irrigates a defensible green space for wildfire protection;

1 (e) water delivered to the property by BlueTriton is used by San
2 Bernardino County, other local, state, USFS and the Nation's
3 firefighters for fighting fires at the property and within the surrounding
4 community, and indeed first responders from local, state and federal
5 agencies use Arrowhead Springs for fire-fighting training.

6 We also informed the above-referenced agency officials that the USFS was
7 obligated to consult with the Nation, and consider the impact to the Nation, before
8 taking any action that could curtail BlueTriton's water deliveries to the Nation. We
9 specifically reminded the USFS that as a Federal "trustee," we expected the USFS
10 to provide a solution to the Nation's water needs if the BlueTriton option was not
11 available. Finally, we offered to provide any additional information the USFS
12 needed regarding Arrowhead Springs' water needs and uses, in writing or
13 otherwise. The USFS officials acknowledged the information we provided, and
14 also indicated they needed no additional information. However, they did ask that
15 the Nation not get involved in USFS' discussions with BlueTriton as, they said, the
16 discussion concerned BlueTriton's reporting and other obligations as a permittee
17 and it was not about the Nation's water use. They specifically said that any actions
18 the agency might take would be regarding BlueTriton and its uses of water, while
19 intimating the Nation would not be affected. USFS officials never formally
20 informed or discussed, much less consulted, with the Nation regarding the
21 subsequent Notice of Denial that would issue against BlueTriton, and never
22 provided the Nation notice upon its issuance.

23 13. In addition to providing the USFS accurate information about the
24 Nation's water needs and uses at Arrowhead Springs, the Nation provided similar
25 information to BlueTriton, so that it could accurately respond to the agency's
26 inquiries about the Nation's water use. To that end, we provided the following
27 substantive statement to BlueTriton so that it would be in a position to answer the
28 USFS' request about the Nation's water uses at Arrowhead Springs:

1 The Tribe understands that BlueTriton Brands (“BTB”) has
2 been asked by the United States Forest Service (“USFS”) for
3 information regarding the use of the water provided to the
4 Arrowhead Springs property by BTB. The Tribe uses the water
5 delivered by BTB at the Arrowhead Springs property for a
6 variety of beneficial and reasonable purposes as has occurred
7 historically. The property is large with a variety of facilities,
8 including, but not limited to, a conference and event center,
9 administration buildings, and recreational and cultural facilities.
10 Such facilities are used by the Tribe daily, including use by
11 tribal citizens, various governmental departments and their
12 employees that are housed in the administrative buildings, and
13 for events. The Arrowhead Springs property lies within the
14 Tribe’s ancestral territory. The Tribe is intimately tied to their
15 ancestral lands as this landscape has and continues to play an
16 important role in the Tribe’s cultural traditions. The Tribe has a
17 history of responsible land and resources management and
18 conducts restoration of native habitat and fire management
19 activities on this property. For example, the Tribe, USFS and
20 County of San Bernardino have jointly participated in the
21 development and implementation of fire protection plans that
22 include the property and rely upon the use of water. In keeping
23 with the Federal government’s fiduciary duty to the Tribe and
24 the federal and state policies recognizing tribal expertise in
25 stewardship of ancestral lands and the water and other natural
26 resources on such lands, the Tribe would be glad to speak
27 further with the USFS on a government-to-government basis.

15 The Tribe has broad water rights claims, including, but not
16 limited to, those acknowledged by the California State Water
17 Resources Control Board in order WR 2023-0042 (SWRCB
18 Order).

18 It is my understanding that BlueTriton provided a copy of the above statement with
19 a June 4, 2024 letter from Louis Mixon of BlueTriton to Front Ranger of the San
20 Bernardino National Forest, Michael Nobles, to Louis Mixon of BlueTriton. A true
21 and correct copy of this correspondence that we received from BlueTriton, in which
22 our statement was included, is attached hereto as **Exhibit 3**.

23 14. For reasons that remain unknown, the Notice of Denial does not spare,
24 or carve out, BlueTriton’s deliveries to Arrowhead Springs as the State Water
25 Resources Control Board (SWRCB) has done in acknowledging the Nation’s water
26 rights at Arrowhead Springs. Instead, the Notice incorrectly asserts again that the
27 “hotel and conference facility on the property is not operating.” The Notice also
28

1 omits the fact that the Strawberry Canyon water is crucial for fire-fighting uses,¹
2 among the Nation's other beneficial uses and needs that were clearly discussed with
3 both the Forest Supervisor, Danelle Harrison, and the Front Country Ranger,
4 Michael Nobles, mentioned above.

5 15. It is unclear why the USFS, fully aware of the Nation's historic
6 reliance upon the water delivered by BlueTriton to Arrowhead Springs, failed to
7 include a carve out in its directive to Blue Triton, as the SWRCB has done in
8 acknowledging the Nation's water rights at Arrowhead Springs. Specifically, in
9 denying BlueTriton's right to appropriate water from certain sources in Strawberry
10 Canyon, the SWRCB acknowledged the Nation "has riparian rights that authorize
11 the diversions through these facilities for beneficial uses on the [Arrowhead
12 Springs] property."

13 16. Upon learning that the USFS issued a July 24, 2024, Notice of Denial
14 directing BlueTriton cease all water delivers (including to the Nation) within seven
15 days, I reached out to Forest Supervisor Danelle Harrison in an effort to address the
16 significance and impact of the action on the Nation. In addition, the Nation notified
17 the agency in writing on July 30, 2024, that it had failed to engage in the formal
18 government-to-government consultation that federal law required (Request for
19 Consultation). Attached hereto as **Exhibit 4** is a true and correct copy of the
20 Request for Consultation. In this formal request, the Nation requested to meet with
21 the USFS officials so we could discuss the full scope of the problem they created
22 with the Notice of Denial and work collaboratively to find a resolution, including a
23 carve out of water deliveries to the Nation as the SWRCB had done.

24 17. Since then, the agency has agreed to participate in weekly staff
25 meetings with Tribal personnel (beginning on September 25, 2024), and I and/or the

26
27 ¹ See, e.g., <https://www.sbsun.com/2024/08/23/potential-water-restrictions-at-arrowhead-springs-hotel-raise-concerns-over-wildfire-danger/> (last visited
28 December 30, 2024).

1 director I oversee have attended all of these meetings. I have also attended
2 additional meetings between UFS officials and Tribal personnel on August 21,
3 2024, September 25, 2024, and November 6, 2024. In August, Tribal personnel
4 hosted USFS officials at Arrowhead Springs to allow them to observe the Nation's
5 water uses and water-related infrastructure at the property that USFS personnel had
6 incorrectly asserted in the Notice of Denial was "nonoperational."

7 18. At no point have USFS officials acknowledged their lack of
8 consultation before issuing the Notice of Denial, and at no point have USFS
9 officials made a good faith consultation effort by presenting or entertaining
10 potential timely solutions to the issue of the Nation's Strawberry Canyon water
11 supply being impaired due to the agency's actions against BlueTriton. Instead,
12 USFS officials have continually asserted, in a conclusory manner, that there is no
13 timely solution available. At no point have USFS officials discussed any issues
14 addressing the water supply to the historic or culturally significant areas existing at
15 Arrowhead Springs.

16 19. The Nation sent letters to USFS officials on November 4, 2024, and
17 November 15, 2024, respectively, to formally express the need for a solution before
18 January 15, 2025, and to express the Nation's dissatisfaction with USFS officials'
19 lack of engagement and the lack of progress that was made in the aforementioned
20 meetings. See **Exhibit 5**, attached hereto, which includes true and correct copies of
21 both letters. Still, USFS officials remain entrenched in their position, asserting that
22 no timely solution is available, and never explaining why the Nation is not entitled
23 to the carve out that the state water agency provided the Nation while denying
24 BlueTriton's right to divert water for commercial bottling purposes. The USFS has
25 not only knowingly made inaccurate statements in its Notice of Denial regarding
26 the use of Arrowhead Springs, but its officials have continued thereafter to
27 misrepresent the facts about the Nation's use and need for water for Arrowhead
28 Springs to officials in Washington, D.C. In essence, the agency has failed to engage

1 in productive discussions, let alone meaningful consultation, with the Nation, either
2 before or after the Notice of Denial was issued.

3 20. The November 4, 2024 Letter (Exhibit 2) also requested a copy of
4 BlueTriton's Decommissioning Plan and demanded that the USFS consult with the
5 Nation on the impacts of BlueTriton's Decommissioning Plan stating:

6 We also request that the [San Bernadino National Forest
7 ("SBNF")] consult with the Nation about mitigating any harm
8 that implementation of the plan may have on the Nation.
9 Again, our consultation with the SBNF about the removal plan
10 is separate and distinct from any ongoing proceeding between
11 the SBNF and BlueTriton, or other parties, and we will work
12 with you to make sure that we only consult on those matters
13 that directly impact the Nation as required by Executive Order
13175, Joint Secretarial Order 3403, USFS' Action Plan and
14 other federal policies." Despite such request, the USFS has not
15 provided a copy of BlueTriton's Decommissioning Plan, stating
16 the Nation should obtain the document through a Freedom of
17 Information Act request or from BlueTriton. The USFS has not
18 consulted with the Nation on the Decommissioning Plan as was
19 requested and as required by law.

20 21. The Nation continues to explore potential non-litigation solutions,
21 including legislative and administrative remedies, to prevent the USFS from
22 shutting off the Nation's Strawberry Canyon water supply on or after January 15,
23 2025. The Nation is also exploring securing alternative water supplies to meet the
24 demands on Arrowhead Springs that are currently met by Strawberry Canyon
25 diversions, in the event that it cannot prevent USFS from shutting off that supply
26 (or from removing the BlueTriton's water transport facilities on San Bernardino
27 National Forest lands or requiring BlueTriton to do the same). Indeed, the Nation
28 has spent significant resources and time trying to find alternatives, including hiring
consultants to advise the Nation on potential non-litigation solutions and alternative
water supplies. None of these non-litigation solutions or alternative water supplies
can be feasibly implemented by January 15, 2025.

22. Alternative water supplies may include municipal water from the San
Bernardino Municipal Water District, but the Nation has been advised that it will
take years to implement as it will require approvals and agreements from the City

1 of San Bernardino (property is in the City's jurisdiction), County of San Bernardino
2 (pipeline must cross property owned by the County Flood Control District) or the
3 Water District, may be cost prohibitive given the necessary infrastructure (over
4 6,000 linear feet of piping and pumping stations to connect to Arrowhead Springs
5 gradient delivery system), and could not be fully operational for years.

6 23. The Nation hoped that USFS would consult in good faith to find a
7 solution allowing continued water deliveries to Arrowhead Springs, whether by
8 extending the temporary authorization or other means. Unfortunately, the agency
9 has not indicated it is willing to further extend the temporary authorization so the
10 Nation and agency can find a viable solution.

11 I declare under penalty of perjury of the laws of the United States that the
12 foregoing is true and correct.

13 Executed this 2nd day of January 2025 at Las Vegas, Nevada.

14
15 
16 DANIEL J. LITTLE